

OFFICE OF THE FEDERAL OMBUDSPERSON

FOR PROTECTION AGAINST HARASSMENT OF WOMEN

AT THE WORKPLACE, ISLAMABAD

FORM OF ORDER SHEET

Complaint No. FOH-HQR/0000303/2023

Date of Institution 17-10-2023

Serial No. of Order of Proceedings	Date of order of Proceedings	THE ENFORCEMENT OF THE WOMEN'S PROPERTY RIGHTS ACT, 2020 Order of other proceedings with Signature of Federal Ombudsperson SAFIA MAJEED VS ABDUL MAJEED AWAN Property Description: House No. 335, Ravi road, Sector G-8/2, Islamabad
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11	20-02-2024	<p><u>Subject:</u> Final Order on Complaint</p> <ol style="list-style-type: none">1. This order shall dispose of the complaint filed by the Complainant against the Respondent under the provisions of the Enforcement of Women's Property Rights Act, 2020 (Act).2. It is an admitted position that the Complainant and the Respondent are in a spousal relationship being wife and husband. It is also admitted that House No. 335, Ravi Road, Sector G-8/2, Islamabad (suit house) was originally owned by the Respondent. However, in the year 2005 he transferred 50 percent of the house to the Complainant as a gift and then in the year 2014 he again gifted the remaining 50% to the Complainant. Both transfers are incorporated in CDA's record, the proof of which has been attached with the complaint by the Complainant. Accordingly, in 2014 the Complainant became the sole owner of the suit house. This fact is further corroborated by the utility bills (property tax bill and electricity consumer bill) provided by the Complainant which show her as the owner of the suit house. In her complaint the

Complainant has sought the possession of the entire suit house on account of the hostile behaviour of the Respondent. In his reply, the Respondent has prayed for the dismissal of the complaint on the ground that possession of the suit house has not been delivered to the Complainant and because there is ongoing civil litigation regarding the said house.

3. In subsequent proceedings before this forum the complaint was declared maintainable vide order dated 30.01.2024, whereafter on 06.02.2024 final arguments in the matter were heard by me. I have also perused the available record.

4. Before us the Complainant has sought the complete possession of the suit house on account of being its sole owner. As noted above in para 2 the Complainant has proven the factum of her ownership through proper documentation, which fact has not been denied by the Respondent except for the ground that he has filed a suit for declaration and revocation of gift before the civil court. Additionally, the CDA has also confirmed the ownership of the Complainant in their report submitted before this forum on 16.01.2024. In such circumstances there can be no doubt that the Complainant is the lawful owner of the suit house and so is entitled to its possession. The Respondent's defence that since civil suits are pending in respect of the suit house therefore this forum cannot take cognizance of the complaint is not persuasive. I have already observed in the order dated 30.01.2024 that Section 7 of the Act permits the Ombudsperson to entertain and hear a complaint even if proceedings are pending in a court of law. It is pertinent to mention here that the civil courts of law are the competent fora for adjudicating the issue of revocation of gift whilst this forum is bereft of that power. Insofar as the stance of the Respondent regarding non-delivery of possession of the suit house to the Complainant is concerned, it is admitted by the Respondent that the Complainant is residing in the suit house. In

the face of such an admission the Respondent cannot now take a completely different stand that the Complainant is not in possession of the house. Even the case reported as **Hayat Muhammad Vs. Muhammad Riaz** (2023 SCMR 2012), which has been cited by the Respondent in support of his claim, is of no help to him because the same merely states that a gift can only be revoked by the donor if possession has not been delivered to the donee. However, in the present case the Complainant is very much in actual possession of the suit house. In any event, as per Rules 152(3) and 153 of the Principles of Muhammadan Law (book by DF Mullah) the requirement of delivery of actual possession is not necessary in situations where the donor and the donee are residing together in the same house which is the subject of the gift or where the husband is the donor and the wife is the donee or vice versa. This view has also been affirmed by the Supreme Court in **Machhia Vs. Panan** (1987 SCMR 2058) where the requirement of delivery of possession in the case of a gift by a husband to his wife was construed liberally and the management of the land by the husband was treated as being on behalf of the wife.

5. Accordingly, for what has been discussed above since the Respondent has no proprietary interest in the suit house, I confer possession of the entire suit house in the Complainant and direct the Respondent to vacate the suit house immediately. The Deputy Commissioner is directed to submit a compliance report with this forum in respect of the implementation of this order within seven days under Section 5(3) of the Act.

FEDERAL OMBUDSPERSON